

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Applications of Guam Cellular and Paging, Inc.) WT Docket No. 06-96
and DoCoMo Guam Holdings, Inc.)
)
For Consent to Transfer Control of Licenses and)
Authorizations)
)
File Nos. 0002556700, ITC-T/C-20060405-00234)
)
and)
)
Applications of Guam Cellular and Paging, Inc.)
and Guam Wireless Telephone Company, L.L.C.)
)
For Consent to Assignment of Licenses and)
Authorizations)
)
File Nos. 0002553437, ITC-ASG-20060404-)
00181)
)
and)
)
Petition for Declaratory Ruling that the)
Transaction Is Consistent with Section 310(b)(4))
of the Communications Act)
)
File No. ISP-PDR-20050404-00005)

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: November 9, 2006

Released: November 13, 2006

By the Commission: Commissioner Copps concurring and issuing a statement.

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I. INTRODUCTION

1. In this Order, we consider applications filed by Guam Cellular and Paging, Inc. (“Guam Cellular”), Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”), DoCoMo Guam Holdings, Inc. (“DoCoMo Guam”), and NTT DoCoMo, Inc. (“DoCoMo”) (collectively, the “Applicants”). The Applicants seek Commission approval of: 1) the transfer of control of Guam Cellular to DoCoMo Guam, a wholly-owned subsidiary of DoCoMo, which is a publicly traded Japanese corporation; and 2) the assignment of licenses and authorizations held by Guam Wireless to Guam Cellular, as controlled directly by DoCoMo Guam (“Proposed Transaction”).¹ The proposed transfer and assignment will occur simultaneously, and, upon consummation, DoCoMo, through DoCoMo Guam, will indirectly control Guam Cellular, which will hold its own licenses and authorizations and Guam Wireless’s licenses and authorizations.

2. The Applicants generally seek Commission approval of the assignment and transfer of control of licenses for Part 22 Cellular Radiotelephone Service (“Cellular”), Part 22 Paging and

¹ See Application to Transfer Control of Licenses Held by Guam Cellular and Paging, Inc. to DoCoMo Guam Holdings, Inc., File No. 0002556700 (filed Apr. 4, 2006) (“Application”); Application to Assign Licenses Held by Guam Wireless Telephone Company, L.L.C. to Guam Cellular and Paging, Inc., File No. 0002553437 (filed Apr. 4, 2006); File No. 0002556700 has been designated the lead Application. The other application contains an exhibit referring to the exhibits attached to file no. 0002556700. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

Radiotelephone Service ("Paging"), Part 24 Personal Communications Service ("PCS"), Part 27 Wireless Communications Service ("WCS"), Part 27 Lower 700 MHz Service ("Lower 700 MHz"), Part 90 Industrial/Business Pool Service ("IB Pool"), and Part 101 Common Carrier Fixed Point-to-Point Microwave Service ("Microwave") held by Guam Wireless and Guam Cellular to DoCoMo Guam. The Applicants also filed applications seeking consent to the transfer of control of a domestic section 214 authorization and two international section 214 authorizations from Guam Cellular to DoCoMo Guam and an application seeking consent to the assignment of one international section 214 authorization from Guam Wireless to Guam Cellular.² Additionally, the Applicants have filed a Petition requesting a Declaratory Ruling that it would not serve the public interest to prohibit the 100 percent indirect foreign ownership by DoCoMo of Guam Cellular (through DoCoMo Guam) under section 310(b)(4) of the Act.³

II. BACKGROUND

A. Description of Applicants

1. Guam Wireless Telephone Company, L.L.C.

3. Guam Wireless, a limited liability company organized under the laws of the Commonwealth of Virginia, provides mobile telephony services, including text messaging⁴ and roaming, under the brand name HafaTEL, to residents and visitors to Guam and the Commonwealth of the Northern Mariana Islands ("CNMI") using its Global Systems for Mobile Communications ("GSM") network.⁵ It offers both prepaid and postpaid services to its customers.⁶ Guam Wireless holds the PCS B-block license, KNLF300, for the Guam-Northern Mariana Islands Major Trading Area ("MTA"), which has a total resident population of approximately 225,000.⁷ Guam Wireless is DoCoMo's roaming partner in both territories.⁸ Guam Wireless has also entered into more than 60 agreements in countries throughout the

² See Application to Transfer Control of International Section 214 Authorizations Held by Guam Cellular and Paging, Inc. to DoCoMo Guam Holdings, Inc., File No. ITC-T/C-20060405-00234, at 1 (filed Apr. 5, 2006); Application to Assign an International Section 214 Authorization Held by Guam Wireless Telephone Company, L.L.C. to Guam Cellular and Paging, Inc., File No. ITC-ASG-20060404-00181, at 1 (filed Apr. 4, 2006) (collectively, "International Section 214 Applications"). See also Guam Cellular and Paging, Inc., Guam Wireless Telephone Company, L.L.C., and NTT DoCoMo, Inc. Application for Assignment, Transfer of Control, and Petition for Declaratory Ruling, Attachment 1, at 6-7 (filed Apr. 4, 2006) (requesting authority to transfer domestic blanket section 214 authority).

³ NTT DoCoMo, Inc., Petition for Declaratory Ruling, File No. ISP-PDR-20060404-00005 (filed Apr. 4, 2006) ("Petition for Declaratory Ruling").

⁴ HafaTel, SMS/HafaTXT, <http://www.hafatel.com/sms.htm> (last visited Oct. 6, 2006).

⁵ Application, Attachment, at 5-6; NTT DoCoMo to Acquire Guam Cellular and Guam Wireless, Press Release, at 1 (Mar. 20, 2006) ("DoCoMo Press Release"), available at <http://www.nttdocomo.com/pr/2006/001249.html> (last visited Oct. 6, 2006); HafaTel News, Guam Wireless Telephone Company, LLC DBA HafaTel Public Announcement, http://www.hafatel.com/special_ann.htm (last visited Oct. 6, 2006) ("Guam Wireless Press Release"); HafaTel, About Us, <http://www.hafatel.com/about.htm> (last visited Oct. 6, 2006) ("HafaTel About Us"); HafaTel, FAQs, <http://www.hafatel.com/faq.htm> (last visited Oct. 6, 2006) ("HafaTel FAQs").

⁶ HafaTel, www.hafatel.com (last visited Oct. 6, 2006); HafaTel, Prepaid, www.hafatel.com/prepaid.htm (last visited Oct. 6, 2006); HafaTel, Postpaid, www.hafatel.com/postpaid.htm (last visited Oct. 6, 2006).

⁷ Application, Attachment, at 5; HafaTel FAQ at 1.

⁸ DoCoMo Press Release at 1.

world to provide “seamless” international roaming for its customers.⁹ Guam Wireless also holds an international section 214 authorization to provide international telecommunications services on a global resale and facilities basis.¹⁰

2. Guam Cellular and Paging, Inc.

4. Guam Cellular is a privately held corporation organized under the laws of Guam.¹¹ It holds the Cellular A-block license in the CNMI (KNKQ367) and also in Guam (KNKN828), providing mobile wireless telephone services to residents and visitors in both territories using the Code Division Multiple Access (“CDMA”) standard.¹² Guam Cellular also [Redacted].¹³ Additionally, Guam Cellular holds Paging, Microwave, IB Pool, WCS, and Lower 700 MHz licenses.¹⁴ Guam Cellular also holds two international section 214 authorizations to provide international telecommunications services on a global resale and facilities basis,¹⁵ as well as a blanket domestic section 214 authorization used to provide business and residential wireline domestic long distance (via direct dial and calling card) in both Guam and the CNMI.¹⁶ In addition, Guam Cellular provides dial-up and DSL Internet access services.¹⁷ In Guam, the company provides service under the brand name “Guamcell Communications;” while in the CNMI, it provides service under the brand name “Saipancell Communications.”¹⁸

⁹ HafaTel, News, <http://www.hafatel.com/archive> (last visited Oct. 6, 2006); HafaTel, Roaming, <http://www.hafatel.com/roaming.htm> (last visited Oct. 6, 2006); HafaTel, Roaming, International Roaming, <http://www.hafatel.com/rlocations.htm> (last visited Oct. 6, 2006).

¹⁰ See International Section 214 Applications, Attachment 1, at 2 (discussing Guam Wireless’s international section 214 authorization, File No. ITC-214-20000507-00304); see also Application, Attachment, at 5, Exhibit A.

¹¹ Application, Attachment, at 4.

¹² *Id.*; DoCoMo Press Release at 1.

¹³ See Letter from Cheryl A. Tritt, Counsel to NTT DoCoMo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Sept. 29, 2006) (“Response to WTB Information Request”).

¹⁴ Application, Attachment, at 4. For a complete list of licenses and authorizations held by Guam Cellular, see Application, Attachment, at Exhibit A.

¹⁵ See International Section 214 Applications, Attachment 1, at 2 (discussing Guam Cellular’s international section 214 authorizations, File Nos. ITC-214-19961120-00583 (for global resold services) and ITC-214-20040517-00201 (for global facilities-based services)); Application, Attachment, at 4, Exhibit A.

¹⁶ See Application, Attachment, at 4-5.

¹⁷ See *id.*

¹⁸ *Id.* at 4; DoCoMo Press Release at 1. See generally Guamcell Communications, <http://www.guamcell.com/main/index.php> (last visited Oct. 6, 2006); Saipancell Communications, <http://www.saipancell.com/main/index.php> (last visited Oct. 6, 2006).

3. NTT DoCoMo, Inc.

5. DoCoMo is a publicly-traded Japanese corporation¹⁹ which, together with its wholly-owned regional subsidiaries, provides mobile wireless voice and data communications services to more than 50 million subscribers throughout Japan.²⁰ DoCoMo's multimedia services include i-mode®, a mobile Internet service that provides email and Internet access to more than 45 million subscribers, and FOMA®, a 3G mobile service launched in 2001 based on W-CDMA technology.²¹ In addition to voice and data communications services (including, for example, capabilities to receive news, stock quotes, weather reports, and telephone directories), DoCoMo offers advanced services that include, *inter alia*, video capabilities, games, mobile banking and other financial services, restaurant guides and reservations, travel reservations, and concert and sporting event tickets, as well as remote monitoring services and remote learning systems via videophones.²²

6. In connection with the proposed transaction with Guam Cellular and Guam Wireless,²³ DoCoMo has established DoCoMo Guam, a new wholly-owned subsidiary organized under the laws of Guam.²⁴ Neither DoCoMo, nor DoCoMo Guam, nor any of DoCoMo's other existing subsidiaries currently holds FCC authorizations.²⁵ DoCoMo has a limited U.S. presence primarily focused on mobile communications technology research and development, general business development, and public relations.²⁶ It owns DoCoMo Communications Laboratories USA, Inc., a research lab facility in San Jose, California, as well as DoCoMo Capital, Inc., also located in San Jose, to invest in venture companies that develop advanced mobile communication technologies.²⁷ In addition, NTT DoCoMo USA, Inc., one of DoCoMo's subsidiaries, has launched a wireless LAN access service called

¹⁹ Application, Attachment, at 6; DoCoMo is listed on the Tokyo, London and New York stock exchanges. Application, Attachment, at 9; DoCoMo Press Release at 1; Guamcell Communications, Press Release, at 2 (Mar. 20, 2006) ("Guamcell Press Release"), available at http://www.guamcell.com/main/index.php?pg=about_guamcell&sub=press_release_06 (last visited Oct. 6, 2006); Saipancell Communications, Press Release, at 2 (Mar. 20, 2006) ("Saipancell Press Release"), available at http://www.saipancell.com/main/index.php?pg=about_saipancell&sub=press_release_06 (last visited Oct. 6, 2006).

²⁰ See Application, Attachment, at 6 n.8; DoCoMo Press Release at 1; Guamcell Press Release at 1; Saipancell Press Release at 1.

²¹ Application, Attachment, at 6; DoCoMo Press Release at 1; Guamcell Press Release at 1-2; Saipancell Press Release at 1.

²² Application, Attachment, at 6.

²³ See discussion *infra* Section II.B (Description of Transaction).

²⁴ Application, Attachment, at i.

²⁵ *Id.* at 7. The Applicants note that DoCoMo once had a minority interest in AT&T Wireless Services, Inc. This interest was purchased by Cingular Wireless as part of the Cingular-AT&T Wireless merger. See Application, Attachment, at 8 n.13; see also Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21528, 21534 ¶ 9, n.91 (2004) ("*Cingular-AT&T Wireless Order*") (discussing DoCoMo's 16% interest in AT&T Wireless and the extinguishment of this interest as part of the Cingular-AT&T Wireless merger).

²⁶ Application, Attachment, at 7.

²⁷ *Id.* at 8.

“Namikiteru” to provide high-speed Internet access to Japanese-speaking residents in the United States.²⁸ Namikiteru has a roaming arrangement with T-Mobile USA, Inc.²⁹

7. Nippon Telegraph and Telephone Corporation (“NTT”), Japan’s largest telecommunications company, currently holds an approximately 62 percent direct voting and equity ownership interest in DoCoMo.³⁰ In 1985, NTT (previously wholly-owned by the Japanese government) was incorporated as a limited liability joint stock corporation.³¹ By law, the Japanese government must own at least one-third of the total number of issued shares of NTT.³² The Applicants report that as of December 2005, the Japanese government held a 38.37 percent direct voting and equity ownership interest in NTT.³³

8. Since 1999, NTT has been organized as a holding company for a group of companies that provide the following five primary lines of business: regional communications services; long distance/international services; mobile services; data services; and other services such as billing, research and development, and marketing.³⁴ In 1991, DoCoMo was incorporated as a subsidiary of NTT and took over NTT’s wireless businesses the following year.³⁵

B. Description of Transaction

9. On March 20, 2006, DoCoMo entered into a Share Purchase Agreement with the Shareholders of Guam Cellular and an Asset Purchase Agreement with Guam Wireless.³⁶ The combined value of this Proposed Transaction is approximately \$71.8 million.³⁷ To effectuate the Share Purchase Agreement, DoCoMo formed DoCoMo Guam, which in a cash transaction will acquire 100 percent of the common shares of Guam Cellular.³⁸ Under the Asset Purchase Agreement, DoCoMo Guam will acquire for cash consideration certain assets and properties, including the FCC licenses, of Guam Wireless.³⁹ To effectuate the acquisition, Guam Wireless will assign its licenses and assets to Guam Cellular, as controlled by DoCoMo Guam.⁴⁰ Upon consummation of the Proposed Transaction, Guam

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ *Id.* at 9. The Applicants explain that NTT’s ownership interest in DoCoMo fluctuates and “generally has decreased over time since DoCoMo became a publicly traded company.” *Id.*

³¹ *Id.* at 18. NTT’s shares are listed on the Tokyo, New York, and London stock exchanges as well as other stock exchanges in Japan. *See id.*

³² *Id.* at 19.

³³ *Id.* at 9, 19. The Applicants note that, as of March 31, 2006, the Japanese government interest in NTT had fluctuated slightly, representing a 38.53% voting and equity ownership interest. *See infra* ¶ 61 & note 220.

³⁴ Application, Attachment, at 18.

³⁵ *Id.*

³⁶ *Id.* at 21.

³⁷ *Id.*; DoCoMo Press Release at 1.

³⁸ Application, Attachment, at 21; DoCoMo Press Release at 1.

³⁹ Application, Attachment, at 21.

⁴⁰ *Id.*

Cellular will, in addition to its own assets and operations, hold the assets and continue to operate the business of Guam Wireless.⁴¹

10. As a result of this Proposed Transaction, DoCoMo (through DoCoMo Guam) would acquire cellular and PCS spectrum covering the entire Guam and CNMI market.⁴² The Applicants state that, for the time being, DoCoMo will continue to operate two separate networks in Guam and the CNMI.⁴³ DoCoMo states that it plans to enhance the quality of Guam Wireless's GSM network by adding General Packet Radio Services ("GPRS") capability and deploying a Wideband Code Division Multiple Access ("W-CDMA") network for third generation services over Guam Cellular's CDMA network.⁴⁴

C. Application Review Process

11. On April 11, 2006, pursuant to section 310(d) of the Communications Act,⁴⁵ the Applicants filed applications seeking consent to the proposed transfer of control of licenses held by Guam Cellular to DoCoMo Guam and assignment of licenses held by Guam Wireless to Guam Cellular.⁴⁶ Pursuant to section 214 of the Communications Act,⁴⁷ the Applicants also filed section 214 applications seeking Commission approval of the transfer of control of two international section 214 authorizations and a domestic section 214 authorization to DoCoMo Guam and the assignment of an international section 214 authorization from Guam Wireless to Guam Cellular.⁴⁸ On May 10, 2006, the Commission released a Public Notice seeking public comment on the Proposed Transaction.⁴⁹ In response to the Comment Public Notice, the Commission received a petition to deny the applications filed by TeleGuam Holdings, LLC ("TeleGuam"),⁵⁰ six letters supporting the applications,⁵¹ one comment filed by the CDMA

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 22. The Applicants state that they "[Redacted]." Response to WTB Information Request at 1.

⁴⁴ Application, Attachment, at 22.

⁴⁵ 47 U.S.C. § 310(d).

⁴⁶ See *supra* note 1 and accompanying text.

⁴⁷ 47 U.S.C. § 214.

⁴⁸ See *supra* note 2 and accompanying text.

⁴⁹ NTT DoCoMo, Inc., Guam Cellular and Paging, Inc., and Guam Wireless Telephone Company, L.L.C. Seek FCC Consent to Assign and Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 06-96, *Public Notice*, 21 FCC Red 4835 (2006) ("Comment Public Notice"). The Comment Public Notice set due dates of June 6, 2006 for Petitions to Deny, June 19, 2006 for Oppositions, and June 26, 2006 for Replies. See *id.* at 4835.

⁵⁰ Petition to Deny and Comments of TeleGuam Holdings, LLC, filed June 9, 2006 ("Petition to Deny"). The Applicants filed an Opposition to the Petition to Deny on June 22, 2006. Guam Cellular and Paging, Inc., Guam Wireless Telephone Company, L.L.C., and NTT DoCoMo, Inc., Opposition, filed June 22, 2006 ("Opposition"). TeleGuam filed a Reply to the Opposition to the Petition to Deny on June 29, 2006. TeleGuam Holdings, LLC, Reply, filed June 29, 2006 ("Reply"). All pleadings and comments are available on the Commission's Electronic Comment Filing System ("ECFS") at www.fcc.gov/cgb/ecfs/.

⁵¹ Letter from Benigno R. Fital, Governor, Commonwealth of the Northern Mariana Islands, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (June 22, 2006) ("Comments of CNMI Governor"); Letter from Jerry Tan, Chairman, Board of Directors, Marianas Visitors Authority, to Secretary of the FCC (June 20, (continued....))

Development Group ("CDG"),⁵² and a letter filed jointly by the Department of Justice ("DOJ"), the Federal Bureau of Investigation ("FBI"), and the Department of Homeland Security ("DHS") (together, the "Executive Branch Entities") requesting that the Commission defer action on the applications until the Executive Branch Entities resolved any potential national security, law enforcement, and public safety issues.⁵³ On October 19, 2006, the Executive Branch Entities filed a petition ("Executive Branch Petition") asking the Commission to condition its grant of the Applications on Applicants' compliance with a network security agreement signed by Guam Cellular, DoCoMo Guam, and the Executive Branch Entities ("Executive Branch Agreement").⁵⁴

12. Both the International Bureau and Wireless Telecommunications Bureau issued to the Applicants requests for additional information, dated June 26, 2006 and September 15, 2006, respectively.⁵⁵ The Applicants responded to these requests on July 24, 2006 and September 29, 2006, respectively.⁵⁶ Further information relating to the outstanding capital stock of DoCoMo was supplied to the International Bureau on September 27, 2006.⁵⁷ Additionally, the Wireless Telecommunications Bureau issued requests for and received information regarding subscribership numbers and coverage

(Continued from previous page)

2006) ("Comments of Marianas Visitors Authority"); Letter from Gerald S.A. Perez, General Manager, Guam Visitors Bureau, to Secretary of the FCC (June 23, 2006) ("Comments of Guam Visitors Bureau"); Letter from J. Michael Fitzgerald, Chairman, Commonwealth Telecommunications Commission, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 4, 2006) ("Comments of Commonwealth Telecommunications Commission"); Letter from Pedro A. Tenorio, Resident Representative to the United States, United States Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 6, 2006, refiled July 10, 2006) ("Comments of CNMI Resident Representative"); Letter from Felix P. Camacho, Governor, Guam, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 12, 2006) ("Comments of Guam Governor").

⁵² Letter from Perry LaForge, CDMA Development Group, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006) ("Comments of CDG") (raising national security and roaming issues and requesting that the Commission seek comments from the Executive Branch on these issues, "if the relevant agencies are not already weighing such issues as part of the 'Team Telecom' review.").

⁵³ Letter from Laura H. Parsky, Deputy Assistant Attorney General, United States Department of Justice, Criminal Division, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 8, 2006).

⁵⁴ Petition to Adopt Conditions to Authorizations and Licenses (Oct. 19, 2006) ("Executive Branch Petition"). See *infra* Section VII (National Security, Law Enforcement, Foreign Policy, and Trade Concerns).

⁵⁵ Letter from James Ball, Chief, Policy Division, International Bureau, Federal Communications Commission, to Cheryl A. Tritt, Morrison & Foerster LLP (June 26, 2006) ("IB Information Request"); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Cheryl A. Tritt, Morrison & Foerster LLP, David A. LaFuria, Lukas, Nace, Gutierrez and Sachs, Chartered, and Thomas K. Crowe, Law Offices of Thomas K. Crowe, PC (Sept. 15, 2006) ("WTB Information Request").

⁵⁶ Letter from Cheryl A. Tritt, Counsel for NTT DoCoMo, Inc., to James Ball, Chief, Policy Division, International Bureau, Federal Communications Commission (July 24, 2006) ("July 24, 2006 Response to IB Information Request"); Response to WTB Information Request at 1-8.

⁵⁷ Letter from Cheryl A. Tritt, Counsel for NTT DoCoMo, Inc., to Susan O'Connell, Policy Division, International Bureau, Federal Communications Commission (Sept. 27, 2006) ("September 27, 2006 Response to IB Information Request").

areas from the other mobile telephony providers in Guam and CNML.⁵⁸ The Wireless Telecommunications Bureau adopted a protective order, dated September 15, 2006, pursuant to which the Applicants and third parties would be allowed to review confidential or proprietary documents submitted in the proceeding.⁵⁹

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

13. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the applicants involved with each proposed transaction have demonstrated that the respective proposed assignments and transfers of control of licenses and authorizations would serve the public interest, convenience, and necessity.⁶⁰ In applying our public interest test, we must assess whether

⁵⁸ Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Richard C. Yu, Choice Phone LLC, and Thomas K. Crowe, Esq., Law Offices of Thomas K. Crowe, PC (Sept. 15, 2006); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Anthony S. Mosely, PTI Pacifica Inc. (Pacific Telecom Inc.), and Kenneth D. Patrich, Esq., Wilkinson Barker Knauer, LLP (Sept. 15, 2006); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Robert Taylor, Pulse Mobile LLC and Paul Gagnier, Esq., Swidler Berlin, LLP (Sept. 15, 2006); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Robert H. McNamara, Nextel License Holdings 4, Inc. (Sept. 15, 2006); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Richard C. Yu, Wave Runner, LLC, and Gregory E. Kunkle, Esq., Law Offices of Thomas K. Crowe, PC (Sept. 15, 2006); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to John M. Borlas, IT&E Overseas, Inc., and Richard D. Rubino, Esq., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (Sept. 15, 2006) (collectively, "Third-Party Information Requests").

The Third-Party Information Requests stated that responses should be delivered to the Commission by September 29, 2006. See Third-Party Information Requests at 2. IT&E Overseas, Inc., Nextel License Holdings 4, Inc., PTI Pacifica Inc., Pulse Mobile, LLC, and WaveRunner LLC filed their responses on September 29, 2006. Letter from John A. Prendergast and Richard D. Rubino, Counsel for IT&E Overseas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006) ("IT&E Response"); Letter from Robert H. McNamara, Director, Spectrum Management, Sprint Nextel, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 29, 2006) ("Nextel Response"); Letter from Kenneth D. Patrich, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006, clarification filed Oct. 13, 2006); Letter from Eliot J. Greenwald, Bingham McCutchen, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006) ("Pulse Mobile Response"); Letter from Robert F. Kelly, Jr., Chief Technical Officer, Wave Runner, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006) ("Wave Runner Response"). Choice Phone, LLC informed the Commission that it would file its response by October 13, 2006. Letter from Richard Yu, Director, Choice Phone LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2006). Choice Phone LLC filed its response on October 13, 2006. Letter from Richard Yu, Director, Choice Phone LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 13, 2006, 2006) ("Choice Phone Response") (collectively, "Third-Party Responses").

⁵⁹ Guam Cellular and Paging, Inc., Transferor and Assignee, and Guam Wireless Telephone Company, L.L.C., Assignor, and NTT DoCoMo, Inc., Transferee, WT Docket No. 06-96, *Protective Order*, DA 06-1877 (rel. Sept. 15, 2006) ("Protective Order").

⁶⁰ 47 U.S.C. §§ 214(a), 310(d).

the proposed transaction complies with the specific provisions of the Communications Act,⁶¹ the Commission's rules, and federal communications policy.⁶² If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁶³ The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁶⁴ The applicants involved with each transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁶⁵ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁶⁶

⁶¹ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, FCC 06-146, at 10 ¶ 16 (rel. Oct. 2, 2006) ("*ALLTEL-Midwest Wireless Order*"); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) ("*Sprint Nextel-Nextel Partners Order*"); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) ("*Verizon-MCI Order*"); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("*Sprint-Nextel Order*"); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) ("*ALLTEL-Western Wireless Order*"); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542 ¶ 40.

⁶² See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

⁶³ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

⁶⁴ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁶⁵ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁶⁶ 47 U.S.C. § 309(e). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300-01 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

14. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."⁶⁷ Therefore, as a threshold matter, the Commission must determine whether the applicants to the Proposed Transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁶⁸ In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors and/or assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.⁶⁹ Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee and/or assignee is qualified to hold Commission licenses.⁷⁰ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁷¹ as well as conduct that takes place outside of the Commission.⁷² In this proceeding, no issues have been raised with respect

⁶⁷ See 47 U.S.C. §§ 308, 310(d); see also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18525-26 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁶⁸ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁶⁹ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310 (d) of the Communications Act of 1934, 43 FED. COMM. L. J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

⁷⁰ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁷¹ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission's rules or policies, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications. *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

⁷² See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18379 (continued....)

to the basic qualifications of Guam Cellular, Guam Wireless, DoCoMo Guam, or DoCoMo. We find that, at this time, there is no reason to evaluate the qualifications of these entities.

15. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁷³ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁷⁴ Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁷⁵ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁷⁶

16. In determining the competitive effects of the proposed transaction, our analysis is informed by, but not limited to, traditional antitrust principles.⁷⁷ Because the Commission is charged with

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¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

⁷³ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁴ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁵ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁶ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301-02 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁷ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. See also *Satellite Business Systems, Memorandum, Opinion, Order, Authorization and Certification*, 62 F.C.C.2d 997, 1088 (1977), *aff'd sub nom* United States v. FCC, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (stating that public interest standard does not require agencies “to analyze proposed mergers under the same standards that the Department of Justice . . . must apply”). The Commission and DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission’s review differ from those of DOJ. See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce. 15 U.S.C. § 18.

determining whether the transfer and assignment of licenses serves the broader public interest,⁷⁸ we take into account factors beyond those considered under a traditional antitrust analysis. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁷⁹ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁸⁰ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another.⁸¹ For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁸²

17. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁸³ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁸⁴ Similarly, section

⁷⁸ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12-13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁷⁹ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁰ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸¹ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸² See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸³ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also *WorldCom-MCI Order*, 13 FCC Rcd at 18032 ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets); *Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779 (2001) ("*Deutsche Telekom-VoiceStream Wireless Order*") (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁸⁴ 47 U.S.C. § 303(r). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit (continued....))

214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁸⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions to ensure that the transaction will, overall, serve the public interest.⁸⁶ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁸⁷ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁸⁸

IV. COMPETITIVE ANALYSIS

18. In assessing the competitive effects of this transaction, we utilize the same analytical framework we recently have used in other transactions resulting in horizontal concentration in mobile telephony markets.⁸⁹ In particular, our analysis is the same with respect to: (1) product and geographic market definition,⁹⁰ the identification of relevant spectrum,⁹¹ and the identification of market

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Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁸⁵ 47 U.S.C. § 214(c). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 13-14 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

⁸⁶ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 14 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁸⁷ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 14 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁸⁸ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 14 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁸⁹ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 14-36 ¶¶ 21-97; *Sprint-Nextel Order*, 20 FCC Rcd at 13981-14011 ¶¶ 30-122; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066-90, 13094-13100 ¶¶ 22-98, 110-131; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552-86, 21584-99 ¶¶ 57-164, 184-200.

⁹⁰ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 16-18 ¶¶ 26-31; *Sprint-Nextel Order*, 20 FCC Rcd at 13983-91 ¶¶ 37-57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067-70 ¶¶ 25-36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557-63 ¶¶ 71-91.

⁹¹ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 18 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13982, 13992-93 ¶¶ 34, 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

participants;⁹² (2) the application of our initial screen to identify markets of possible competitive concern;⁹³ (3) the general analysis of the likelihood of unilateral effects and coordinated interaction;⁹⁴ and (4) the market-specific evaluation of possible competitive harm.⁹⁵ The parties here do not challenge this analytical framework or the general conclusions about competition in mobile telephony markets we have previously reached based on it.

A. Market Definition

19. *Product market.* We adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephone market. In those orders, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.⁹⁶ Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.⁹⁷ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.⁹⁸ Neither the Applicants nor the Petitioner challenged this product market definition in their submissions. Accordingly, we will use the same product market definition in this analysis.

20. *Geographic Market.* In recent mobile telephony transactions, the Commission applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, are larger than counties, may encompass multiple counties and, depending on the consumer’s location, may even include

⁹² See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19 ¶¶ 32-33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991-92 ¶¶ 58-60; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 37-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563-64 ¶¶ 91-94.

⁹³ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 20-24 ¶¶ 34-43; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-95 ¶¶ 62-67; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071-75 ¶¶ 40-51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21564-69 ¶¶ 95-112.

⁹⁴ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 24-30 ¶¶ 44-62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 52-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569-86 ¶¶ 113-164.

⁹⁵ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 30-36 ¶¶ 63-97; *Sprint-Nextel Order*, 20 FCC Rcd at 14009-11 ¶¶ 117-22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13094-100 ¶¶ 110-31; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21593-99 ¶¶ 184-200.

⁹⁶ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 16 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

⁹⁷ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 16 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

⁹⁸ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 16 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

parts of more than one state.⁹⁹ The Commission in these orders identified two sets of geographic areas that may be used to define local markets—Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).¹⁰⁰ Neither the Applicants nor the Petitioner challenged this product market definition in their submissions. Accordingly, we will use the same geographic market definition in this analysis.

21. *Input market for spectrum.* In the *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, the Commission evaluated whether spectrum is within the input market for mobile telephony service by examining its suitability for mobile voice service, its physical properties, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.¹⁰¹ We find that the input market currently includes cellular, PCS, and Specialized Mobile Radio (“SMR”) spectrum¹⁰² and currently totals approximately 200 MHz of spectrum.¹⁰³

⁹⁹ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 17-18 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

¹⁰⁰ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 17 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶¶ 104-105.

¹⁰¹ See *ALLTEL-Midwest Wireless Order*, FCC -6-146, at 18 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

¹⁰² We find, consistent with previous Commission determinations, that Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) 2.5 GHz spectrum is not currently part of the input market for mobile telephony service. Currently, this spectrum is committed to uses other than mobile telephony. See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 18 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283. We note that this spectrum is currently subject to rebanding requirements, which will alter the bandwidth held by Sprint Nextel and which will be made available to the market. This will result in less available total bandwidth, but will provide more contiguous spectrum suitable for the provision of advanced mobile services, which may include mobile telephony services. Subsequent to the adoption of the *Cingular-AT&T Wireless Order*, Congress adopted the Commercial Spectrum Enhancement Act, Public Law No. 108-494 (2004), enabling the Commission to announce its intent to auction Advanced Wireless Services (“AWS”) licenses as early as June 2006. See FCC to Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services, *News Release* (rel. Dec. 29, 2004). This auction, Auction No. 66, closed on September 18, 2006. See FCC’s Advanced Wireless Services (AWS) Spectrum Auction Concludes, *News Release* (rel. Sept. 18, 2006). In the auction, a total of 104 bidders won 1,087 licenses. *Id.*; Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice*, Report No. AUC-06-66-F (Auction No. 66), DA 06-1882 (rel. Sept. 20, 2006) (“*Auction No. 66 Public Notice*”).

¹⁰³ The approximately 200 MHz of spectrum includes 50 MHz for cellular services, 120 MHz for Broadband PCS, and additional spectrum for SMR. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, *Eleventh Report*, FCC 06-142, at ¶¶ 62-64 (rel. Sept. 29, 2006) (“*Eleventh Competition Report*”). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19 n.130; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 n.155; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 ¶ 81.

22. *Market participants.* In the *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, the Commission limited its analysis to cellular, PCS, and SMR facilities-based carriers, and excluded satellite carriers, wireless VoIP providers, MVNOs, and resellers from consideration when computing initial measures of market concentration.¹⁰⁴ Neither the Applicants nor the Petitioner challenged this market participant definition in their submissions. Accordingly, we will use the same market participant definition in this analysis.

B. Data and Initial Screen

23. In evaluating this transaction, we applied the same criteria the Commission has used in prior mobile telephony transaction orders to identify markets likely to be adversely affected.¹⁰⁵ We examined the impact of the proposed transaction on subscriber concentration measures as well as the concentration of spectrum holdings in each geographic market. In previous transactions, we examined a market further if the post-transaction Herfindahl-Hirschman Index ("HHI")¹⁰⁶ would be greater than 2800 and the change in HHI would be 100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI;¹⁰⁷ or if, post-transaction, the Applicants would have a 10 percent or greater interest in

¹⁰⁴ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is currently significantly higher than for services offered by cellular, PCS, or SMR carriers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Sept. 29, 2006); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html/> (last visited Oct. 12, 2006). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP carriers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19-20 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151. VoIP using mobile phones is not anticipated to be available until sometime in 2007. See, e.g., John Blau, *Mobile VoIP not here until 2007*, TECHWORLD, March 13, 2006, available at <http://www.techworld.com/mobility/news/index.cfm?NewsID=5553> (last visited Oct. 12, 2006). See also *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 19-20 n.134.

¹⁰⁵ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 20 ¶ 34; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63-65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071-74 ¶¶ 40-49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

¹⁰⁶ Market concentration is generally measured by the "HHI," and changes in concentration are measured by the change in the HHI. See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 15 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69.

¹⁰⁷ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 21 ¶ 36; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

70 MHz or more of cellular, PCS, and SMR spectrum.¹⁰⁸ For this transaction, our initial screen criteria results in only one market, Guam CMA, requiring an in-depth analysis.

24. In order to identify those areas that require further examination, we collected subscriber data from the mobile telephony carriers in Guam and the CNMI.¹⁰⁹ We then used this subscriber data to estimate market concentration levels and market shares for both the Guam and CNMI CMAs.¹¹⁰ Based on the carrier subscriber data, we found that the post-transaction market shares for the merged entity in these markets would be [Redacted] percent in Guam and [Redacted] percent in the CNMI. Further, for Guam, the subscriber data shows a post-transaction HHI of [Redacted] with a change in the HHI of [Redacted]. For the CNMI, the subscriber data shows a post-transaction HHI of [Redacted] with a change in the HHI of [Redacted]. Therefore, application of our subscriber-based initial screen to this data shows that only the Guam CMA requires a more in-depth analysis to determine likely competitive effects. Also, the application of our spectrum aggregation initial screen did not result in additional markets being targeted for in-depth analysis.¹¹¹

C. Market-Specific Evaluation

25. As noted above, application of our initial screen identified the Guam CMA as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. This section examines how the transaction could affect competitive behavior in the Guam CMA. As discussed in the *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, competition may be harmed either through unilateral actions¹¹² by the merged entity or through coordinated interaction¹¹³ among firms competing in the relevant market.

¹⁰⁸ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 22 ¶ 39; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106, 109.

¹⁰⁹ See *supra* note 58 and accompanying text (discussing the Third-Party Information Requests).

¹¹⁰ Although in recent transactions we have analyzed market concentration levels and market shares using both CMAs and Component Economic Areas (CEAs), we have used only CMAs in the Proposed Transaction because the CMAs and CEAs for Guam and the CNMI reflect identical geographic areas. See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 21 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105.

¹¹¹ See *supra* ¶ 23.

¹¹² Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 25 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

¹¹³ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 29 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

26. In this order, we find that extended qualitative discussions of unilateral effects and coordinated interaction are unnecessary.¹¹⁴ First, many aspects of our previous analyses in the *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order* are unchallenged here.¹¹⁵ Second, because only one local area requires in-depth analysis, it is feasible to turn directly to a market-specific discussion of this CMA and discuss the likelihood of both unilateral effects and coordinated interaction that may occur in this market as a result of the proposed transaction. As further explained below, our in-depth, market-specific analysis finds that there is no significant likelihood of harm from either unilateral effects or coordinated interaction in Guam as a result of this transaction. In particular, we find that there are sufficient current and potential rival mobile telephony operators with sufficient spectrum and comparable coverage to deter unilateral price increases or output reductions by the merged entity after this transaction.

27. DoCoMo is ultimately acquiring both Guam Cellular and Guam Wireless. TeleGuam claims that the combined entity will have a 55 to 65 percent market share in the Guam market.¹¹⁶ The Applicants argue that TeleGuam's claim regarding the merged entity's market share is unsupported by any evidence or analysis, and therefore should not be considered by the Commission.¹¹⁷ Further, the

¹¹⁴ In a number of the Commission's recent mobile telephony transaction orders, the initial screen typically identified large numbers of local areas as requiring in-depth analysis. For example, in the *Cingular-AT&T Wireless merger*, 270 CMAs were caught by the screen; when the screen was applied to CEAs, 180 such regions were caught. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110. The *Sprint-Nextel* screen caught 190 CMAs and 124 CEAs. See *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63. Finally, the *ALLTEL-Western Wireless* screen caught 19 CMAs and 11 CEAs. See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 50. These large numbers meant that it was impractical to set out in an order a discussion of each local market; however, such an extended exposition was also unnecessary. The Commission proceeded by examining under what circumstances competitive harm—in the form of either coordinated interaction or unilateral effects—would be likely in local mobile telephony markets. This in-depth, qualitative analysis yielded criteria for determining whether harm is likely that were applicable to all the markets caught by the screen, which were then applied to individual markets. See *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 25-30 ¶¶ 47-62; *Sprint Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164. Market-specific discussion was primarily confined to those markets for which the Commission concluded that harm was likely, and was contained in confidential appendices.

¹¹⁵ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (see *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (see *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); and (3) marginal cost reductions (see *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (see *Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (see *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (see *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (see *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (see *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (see *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 73-74; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-82 ¶¶ 154-155); and (7) presence of mavericks (see *Sprint-Nextel Order*, 20 FCC Rcd at 13997-98 ¶¶ 79-80; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162).

¹¹⁶ Petition to Deny at 2. TeleGuam does not provide any underlying support for this assertion.

¹¹⁷ See Opposition at 9.

Applicants argue that TeleGuam provides no evidence to show that the merged entity will have the incentive or the ability to raise prices, restrict output, or prevent competitors from obtaining access to additional spectrum.¹¹⁸

28. TeleGuam also claims that the proposed transaction will enable DoCoMo to act anticompetitively in Guam by introducing several advanced services, such as mobile banking, ticket purchasing, travel information, and remote learning, while not permitting other Guam carriers to provide these services.¹¹⁹ TeleGuam requests that the Commission impose conditions to require DoCoMo to license its voice and data services and features to all other Guam carriers.¹²⁰ The Applicants argue that TeleGuam's request for licensing DoCoMo's voice and data services and features to all other Guam carriers would discourage innovation and eventually will deny consumers lower prices and better, advanced services.¹²¹ The Applicants further argue that the Guam mobile telephony market is competitive with four to six well-capitalized, facilities-based carriers offering competitive services.¹²² The Applicants assert that this level of competition is unlikely to present opportunities for the merged entity or any other Guam wireless carrier to act anticompetitively.¹²³

29. Guam is an unincorporated United States territory located in the North Pacific Ocean.¹²⁴ Guam has a population of about 154,805,¹²⁵ and a population density of approximately 730 POPs/sq.mile.¹²⁶ Guam Cellular and Guam Wireless operate CDMA and GSM networks in Guam, respectively. Based on the carrier subscriber data, Guam Cellular and Guam Wireless currently have [Redacted] percent and [Redacted] percent of the mobile telephony subscriber market share in Guam, respectively. Combined, we find that these two entities would have a post-merger market share of [Redacted] percent.¹²⁷ Guam Cellular and Guam Wireless hold Cellular A-block (25 MHz) and PCS B-block (30 MHz) spectrum licenses, respectively. Throughout the Guam CMA, the merged entity would hold a total of 55 MHz of spectrum.

30. There are several other entities holding cellular, PCS, and SMR licenses in Guam. Pulse Mobile, LLC, a wholly-owned subsidiary of TeleGuam,¹²⁸ currently has an [Redacted] percent market

¹¹⁸ See *id.*

¹¹⁹ See Petition to Deny at 9.

¹²⁰ See *id.*

¹²¹ See Opposition at 22-23.

¹²² See Application, Attachment, at 27-30; see also Opposition at 6.

¹²³ See Application, Attachment, at 27-30; see also Opposition at 6.

¹²⁴ Guam is approximately 6,000 miles west of San Francisco. See <http://ns.gov.gu/> (last visited Oct. 11, 2006).

¹²⁵ Population figure is based on 2000 Census data. See U.S. Census Bureau, American FactFinder, http://factfinder.census.gov/servlet/DTGeoSearchByListServlet?ds_name=DEC_2000_IAGU&_lang=en&_ts=179422615804 (last visited Oct. 20, 2006). The geographic area information is from the official Guam government website. See <http://ns.gov.gu/geography.html> (last visited Oct. 11, 2006).

¹²⁶ POPs is an industry term referring to population, usually the number of people covered by a given wireless license or footprint. One "POP" equals one person. See *Eleventh Competition Report*, FCC 06-142, at n.29.

¹²⁷ TeleGuam also provided its own estimate of 55 to 65 percent market share for the merged entity. See Petition to Deny at 2.

¹²⁸ Petition to Deny at 2.

share and holds the B-block cellular (25 MHz) and E-block (10 MHz) PCS licenses. It operates both Time Division Multiple Access ("TDMA") and GSM networks in Guam, and its coverage area in Guam is [Redacted].¹²⁹ IT&E Overseas, Inc. ("ITE") currently has a [Redacted] percent market share and holds the C-block PCS (30 MHz) and D-block PCS (10 MHz) licenses. IT&E provides service on a CDMA network in Guam and [Redacted].¹³⁰ IT&E's CDMA coverage is [Redacted].¹³¹ Choice Phone LLC currently has an [Redacted] percent market share, holds SMR licenses and operates an iDEN network¹³² in Guam, and its current coverage area in Guam [Redacted].¹³³ Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") holds the A-block PCS (30 MHz) license,¹³⁴ Wave Runner LCC ("Wave Runner") holds the F-block PCS (10 MHz) license, and Nextel License Holdings 4, Inc. ("Nextel"), a wholly-owned subsidiary of Sprint Nextel, holds SMR licenses. Currently, BANZHI and Wave Runner [Redacted].¹³⁵ Using its spectrum in Guam, Nextel [Redacted].¹³⁶ The pre- and post-transaction HHIs for Guam are [Redacted] and [Redacted], respectively, and the change in the HHI is [Redacted].

31. As explained below, we find that, even in light of the change in the HHI, this transaction is unlikely to result in significant competitive harm in the Guam CMA. Even though, post-transaction, the merged entity would have a combined market share of [Redacted] percent, there would be three other competitors, IT&E, Pulse Mobile, and Choice Phone, with spectrum holdings and network coverage that would likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, reduce service quality, or restrict output. Further, we conclude from our analysis of the various factors we have considered in recent mobile telephony transactions that this transaction is unlikely to alter conditions in Guam in such a way as to make coordinated interaction more likely, more successful, or more complete. Post-transaction, four mobile telephony providers will remain in the Guam CMA, and each carrier has spectrum holdings and network coverage sufficient to continue to compete vigorously in the provision of mobile telephony services.

32. Finally, regarding TeleGuam's argument that DoCoMo's ability to introduce advanced services would be harmful to competition, we have previously found that a firm gaining certain competitive advantages by distinguishing itself in the marketplace, such as by offering new services or products, has not necessarily engaged in or will engage in anticompetitive behavior. The development of

¹²⁹ See generally Pulse Mobile Response.

¹³⁰ See IT&E Wireless, <http://www.itepcs.net/> (last visited Nov. 9, 2006); IT&E Help Center, About PCS, <http://www.ite.net/help/wireless/about.php#pcs> (last visited Nov. 9, 2006); see generally IT&E Response.

¹³¹ See generally IT&E Response.

¹³² See Telephone Number Portability, CC Docket No. 95-116, *Order*, 20 FCC Rcd 16323, 16325 ¶ 7 (Spectrum & Comp. Pol. Div., Wireless Telecomm. Bureau 2005). Integrated Digital Enhanced Network ("iDEN") is a technology provided to mobile telephony carriers by Motorola, Inc. See *Sprint-Nextel Order*, 20 FCC Rcd at 13970 ¶ 5.

¹³³ Choice Phone Response at Attachment.

¹³⁴ The Commission has recently consented to the assignment of the PCS A-Block license, covering both the Guam and CNMI CMAs, from BANZHI to PTI Pacifica Inc. See Application of Bell Atlantic New Zealand Holdings, Inc., Assignor, and GTE Pacifica, Inc., Assignee, for the Assignment of Personal Communications Service License WQCV808 (MTA 050), File No. 0002401623, *Order*, DA 06-2197 (rel. Oct. 27, 2006).

¹³⁵ Wave Runner Response at Attachment. Wave Runner plans to start a GSM network sometime in 2006. See http://www.gsmworld.com/roaming/gsminfo/net_guwg.shtml (last visited Oct. 27, 2006).

¹³⁶ Nextel Response at 2.

unique competitive advantages is the essence of the competitive process.¹³⁷ The introduction of new services and products to Guam may result in the combined entity having a competitive advantage over other mobile telephony providers in Guam. These new services, however, may benefit consumers, and other mobile telephony carriers in Guam are free to develop their own innovative products and services. Therefore, we deny TeleGuam's request to condition this transaction on requiring DoCoMo to license its voice and data services and features to all other Guam carriers.

D. Roaming

1. Background

33. Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.¹³⁸ Section 20.12 of the Commission's rules imposes on CMRS providers the obligation to provide manual roaming arrangements to the subscriber of another provider on request.¹³⁹ We note that the Commission is currently reviewing whether roaming requirements applicable to CMRS providers should be modified given the current state of the CMRS market.¹⁴⁰

34. CDG argues that, given the "crucial military importance" of Guam, it is "critical that visitors to the region have reasonable access to roaming services for their CDMA-based wireless services."¹⁴¹ CDG states that it filed comments in the proceeding to "highlight the nexus between national security issues and reasonable access to roaming for CDMA users."¹⁴² CDG expresses concern that the Applicants did not address (in their original applications) their specific plans for the CDMA network operated by Guam Cellular.¹⁴³ In response, the Applicants state that DoCoMo currently expects to

¹³⁷ See Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9837-38 ¶ 105 (2001) ("*Deutsche Telekom-VoiceStream Wireless Order*").

¹³⁸ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 36 ¶ 98; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) ("*Roaming Notice*").

¹³⁹ 47 C.F.R. § 20.12(c) provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

¹⁴⁰ See *Roaming Notice*, 20 FCC Rcd at 15055 ¶¶ 18-19.

¹⁴¹ Comments of CDG at 2-3. CDG is a "non-profit, international consortium of over 110 companies, including the world's leading operators and manufacturers" of services and systems based on CDMA technologies. *Id.* at 1.

¹⁴² *Id.* at 2-3.

¹⁴³ *Id.* (stating that there is "intrinsic value" in maintaining a CDMA network in Guam and in the CNMI, particularly in order to ensure roaming access for visitors from the mainland United States and other countries, such as Japan and South Korea).

continue operating two separate networks (GSM and CDMA) in Guam and the CNMI, and expects no significant subscriber transition issues in the near term.¹⁴⁴ The Applicants also state that they intend to deploy a W-CDMA network on the excess capacity of Guam Cellular's existing 850 MHz network and will also continue to provide CDMA service as the marketplace demands.¹⁴⁵

35. TeleGuam also argues that the Proposed Transaction raises "international roaming" concerns. TeleGuam states that Guam wireless carriers derive significant revenues from international roaming by tourists from nearby countries such as Japan and Korea.¹⁴⁶ It argues that the Commission should require DoCoMo to enter into reasonable, reciprocal "plastic roaming" agreements at reasonable rates and at reasonable and non-discriminatory terms and conditions with Guam carriers.¹⁴⁷ In addition, it also asks the Commission to require DoCoMo to make available to Guam carriers the dual-mode handsets (which DoCoMo offers its customers in Japan) at reasonable rates and at reasonable and non-discriminatory terms and conditions.¹⁴⁸ In response, the Applicants state that DoCoMo is receptive to establishing roaming partnerships with other local operators and entered into a roaming agreement with Pulse Mobile, TeleGuam's wireless subsidiary, on June 21, 2006, shortly after TeleGuam's Petition to Deny was filed.¹⁴⁹ The Applicants state that the agreement allows Pulse Mobile's customers to roam in Japan and is substantially similar to DoCoMo's agreement with Guam Wireless.¹⁵⁰ In terms of DoCoMo's customers roaming in Guam, the Applicants state that the dual-mode handsets are currently customized for Japanese subscribers to operate on DoCoMo's 2 GHz W-CDMA network.

2. Discussion

36. In evaluating the impact of the Proposed Transaction on roaming services, we focus on the potential harm to consumers of mobile telephony services and conclude that the Proposed Transaction will not adversely affect the availability of roaming services in Guam or in the CNMI. First, the transaction will not reduce the number of CDMA operators in either Guam or the CNMI in the near term. Second, local and domestic CDMA customers will continue to have access to other CDMA operators in Guam and the CNMI since IT&E Overseas and PTI Pacifica operate CDMA networks in Guam and the

¹⁴⁴ Application, Attachment, at 36.

¹⁴⁵ Response to WTB Information Request at 2.

¹⁴⁶ Petition to Deny at 6.

¹⁴⁷ TeleGuam describes a "plastic roaming" arrangement in which the Japanese customer removes the SIM card out of his or her handset and puts it in a GSM handset in Guam. Petition to Deny at 8.

¹⁴⁸ *Id.*

¹⁴⁹ Response to WTB Information Request at 7-8. The Applicants also state that there currently are two other rival wireless operators, KDDI and Softbank Mobile (formerly Vodafone K.K.), and two other potential wireless operators, eAccess Ltd and IPMobile Inc., that are expected to launch service in Japan between the Fall of 2006 and Spring of 2007. See Application, Attachment, at 14-15.

¹⁵⁰ Opposition at 21.

CNMI, respectively.¹⁵¹ Finally, local and domestic CDMA customers can also use dual-mode CDMA/GSM handsets¹⁵² to roam in Guam and the CNMI using the local GSM networks.

37. We also note that, with respect to TeleGuam's request that the Commission should require DoCoMo to enter into reasonable, reciprocal "plastic roaming" agreements at reasonable rates and at reasonable and non-discriminatory terms and conditions with Guam carriers, the record shows that DoCoMo has now entered into roaming agreements with both Guam Wireless and Pulse Mobile, TeleGuam's subsidiary, the only two GSM operators in Guam. In terms of TeleGuam's arguments to require "DoCoMo to make available to Guam carriers its dual-mode handset,"¹⁵³ this concern appears to be more appropriately directed to the manufacturer(s) of such handsets.

38. Accordingly, we conclude that the Proposed Transaction will not adversely affect the availability of roaming services in Guam or in the CNMI and decline to impose any conditions on the Proposed Transaction regarding roaming services.

E. Public Interest Benefits

39. In addition to assessing the potential competitive harms of the Proposed Transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, merger-specific public interest benefits.¹⁵⁴ In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the combination.¹⁵⁵

40. As discussed below, we find that the Proposed Transaction is likely to result in certain merger-specific public interest benefits. We reach this conclusion recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.

1. Analytical Framework

41. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and

¹⁵¹ See also *infra* Section VII (National Security, Law Enforcement, Foreign Policy and Trade Concerns) (concluding that adoption of network security condition sought by the Executive Branch Entities addresses CDG's concerns).

¹⁵² There are dual-mode or worldmode handsets available in the market place. See CDG's website at <http://www.cdg.org/technology/roaming/worldmode.asp>.

¹⁵³ Petition to Deny at 8.

¹⁵⁴ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 39 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

¹⁵⁵ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 39 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

therefore result in lower prices, improved quality, enhanced service or new products.”¹⁵⁶ Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.¹⁵⁷

42. There are several criteria the Commission applies in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”¹⁵⁸ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.¹⁵⁹ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”¹⁶⁰ Furthermore, as the Commission has previously explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the

¹⁵⁶ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 39 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

¹⁵⁷ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 39 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

¹⁵⁸ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 39 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205; accord *Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee)*, CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20630 ¶ 189 (2002) (“*EchoStar-DirecTV HDO*”); *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063-64 ¶ 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, i.e., that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger . . .”). Cf. *DOJ/FTC Merger Guidelines* § 4.

¹⁵⁹ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384-85 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

¹⁶⁰ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530-31 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

present.”¹⁶¹ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”¹⁶² The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.¹⁶³

43. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.¹⁶⁴ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”¹⁶⁵ On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the transaction.¹⁶⁶

2. Discussion

44. The Applicants and commenters state that the proposed transaction would serve the public interest, because DoCoMo’s financial strength, technological expertise, and innovation would “deliver substantial pro-competitive benefits”¹⁶⁷ to wireless consumers in Guam and the CNMI.¹⁶⁸ Specifically, the Applicants maintain that the combined entity would achieve economies of scale and scope allowing the merged company to more effectively compete against other wireless carriers.¹⁶⁹ The Applicants also contend that the merger would allow the combined entity to provide higher quality service and would enable the combined entity to deploy advanced wireless services and technologies more rapidly than

¹⁶¹ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205 (citing *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

¹⁶² See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

¹⁶³ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

¹⁶⁴ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

¹⁶⁵ See *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

¹⁶⁶ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 40 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

¹⁶⁷ Application, Attachment, at i.

¹⁶⁸ *Id.* at i, 24, 31, 35; Comments of CNMI Governor at 1; Comments of Guam Governor at 1.

¹⁶⁹ Application, Attachment, at 4.